

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA, DEPARTMENT OF  
FISH AND GAME,

Plaintiff,

v.

FEDERAL SUBSISTENCE BOARD, *et*  
*al.*,

Defendants,

v.

ORGANIZED VILLAGE OF KAKE,

Intervenor-Defendant.

Case No. 3:20-cv-00195-SLG

**ORDER RE MOTION TO FILE BRIEF OF *AMICUS CURIAE***

Before the Court at Docket 51 is Sealaska Corporation's Motion to File Brief of *Amicus Curiae*. The State of Alaska responded in opposition at Docket 53, to which Sealaska replied at Docket 54. Neither Defendants nor Intervenor-Defendant oppose the motion.<sup>1</sup>

**DISCUSSION**

The District of Alaska's Local Civil Rules and the Federal Rules of Civil Procedure do not set forth the manner in which an amicus brief may be filed in a district court. The Court therefore looks to Federal Rule of Appellate Procedure

---

<sup>1</sup> See Docket 52 at 2.

29 for guidance. Under Rule 29, a court may consider whether the movant has an interest in the litigation, whether the amicus brief would be beneficial for the court, and whether the issues discussed in the amicus brief are relevant to the case.<sup>2</sup>

Here, Sealaska clearly has an interest in this case because it is the regional Native corporation for Southeast Alaska, whose shareholders' rights to subsistence hunting and fishing—which Sealaska asserts are critical sources of food for many of its shareholders and integral to the sharing tradition of Alaska Native culture—may be impacted by this litigation. The Court previously permitted Sealaska to file an amicus brief during the preliminary injunction stage and finds its continued input in this case could be beneficial to the Court.<sup>3</sup> And the matters addressed in the proposed amicus brief, particularly Sealaska's discussion of Congress' intent in enacting Title VIII of the Alaska National Interest Lands Conservation Act, are clearly relevant to the case.<sup>4</sup>

The State of Alaska contends that the proposed amicus brief “presents misleading arguments” and “attempts to include documents that are not part of the administrative record.”<sup>5</sup> The Court expects to be able to discern if any participant

---

<sup>2</sup> See Fed. R. App. P. 29(a)(3).

<sup>3</sup> See Dockets 21, 23.

<sup>4</sup> See Docket 51-2 (Proposed Amicus Br.).

<sup>5</sup> Docket 53 at 1–5.

presents misleading arguments to the Court and is well aware of its obligation to generally limit its review to the administrative record.<sup>6</sup>

As to the proposed exhibits appended to the lodged brief, the Court will take judicial notice of Docket 51-3 because it consists of legislative facts subject to judicial notice. Likewise, the Court finds that Docket 51-4, the *Langdon* report, will not be considered as part of the administrative record or as adjudicated factual findings in this case. Rather, the report will be considered solely insofar as it may have relevance to the Court's legal reasoning and/or the lawmaking process, "whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body."<sup>7</sup>

### CONCLUSION

In light of the foregoing, IT IS ORDERED that Sealaska Corporation's Motion to File Brief of *Amicus Curiae* at Docket 51 is GRANTED. The proposed amicus brief lodged at Docket 51-2 and the exhibits at Dockets 51-3 and 51-4 are accepted for filing.

Dated this 24<sup>th</sup> day of August, 2021 in Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE

---

<sup>6</sup> *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 992 (9th Cir. 2014) ("In general, a court reviewing agency action under the APA must limit its review to the administrative record.").

<sup>7</sup> Evidence Rule 201 (Advisory Committee Note of 1972).

